

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-11,845
	:
	:
vs.	: CRIMINAL DIVISION
	: Habeas Corpus
KRISTEN LEIGH LUTZ,	:
Defendant	:

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-11,844
	:
	:
vs.	: CRIMINAL DIVISION
	: Habeas Corpus
CARL FRANKLIN LUTZ,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendants' Petition for Writ of Habeas Corpus, filed November 30, 2000. Argument on the Petition was heard January 31, 2001.

Defendants have been charged with fifteen (15) counts of furnishing a malt or brewed beverage to a minor¹ and six (6) counts of corrupting the morals of a minor² as a result of their daughter's graduation party where, the Commonwealth alleges, they allowed minors to consume alcohol (beer) after they came home and became aware of the party. A preliminary hearing was held on November 15, 2000, after which Defendants were held for Court on all charges. In the instant

¹18 Pa.C.S. Section 6310.1.

²18 Pa.C.S. Section 6301.

Petition for Writ of Habeas Corpus, Defendants contend the evidence introduced at the preliminary hearing was insufficient to establish a prima facie case.

To establish a prima facie case, the Commonwealth must show that a crime has been committed and that the accused is probably the perpetrator of that crime. Commonwealth v Allbeck, 715 A.2d 1213 (Pa. Super. 1998). The Commonwealth need not prove that an accused committed the crime beyond a reasonable doubt at the preliminary hearing stage, but must present evidence of the existence of each and every element of the crime charged. Commonwealth v Lopez, 654 A.2d 1150 (Pa. Super. 1995).

Here, the Commonwealth has charged Defendants with furnishing³ alcohol to:

Count 1 - Brian D.⁴

Count 2 - Bradley E.

Count 3 - Barbara L.

Count 4 - Kendra M.

Count 5 - Joshua B.

Count 6 - Adam T.

Count 7 - Rocky C.

Count 8 - Ryan B.

Count 9 - Michael D.

Count 10 - Angela B.

Count 11 - Kaeli D.

Count 12 - Rachel T.

Count 13 - Nathan T.

Count 14 - Stacey B.

³Defendants concede, for argument's sake, that "furnishing" alcohol may be interpreted to include "allowing consumption of alcohol" on their property.

⁴Although the minors' full names are necessarily listed in the criminal complaint, the Court chooses to respect the privacy of the families involved by not naming them in this Opinion.

Count 15 - Kevin T.

The Commonwealth must, therefore, show that each of these named individuals

- (1) was under the age of 21 at the time of the incident,
- (2) consumed alcohol,
- (3) on Defendants' property,
- (4) with Defendants' knowledge and consent.

According to the evidence presented by the Commonwealth, however, except for Angela B., Barbara L. and Kendra M., it is impossible to conclude that any of these individuals

- (1) was under the age of 21 at the time of the alleged incident,
- (2) knew or were acquainted with or even came in contact with the defendants,
- (3) ever were provided with any food or drink by the defendants,
- (4) ever consumed alcohol on the defendants' property or in their presence or ever consumed alcohol, period,
- (5) was even on Defendants' property at the time of the alleged incident,
- (6) was even in Lycoming County at the time of the alleged incident, or
- (7) even exists.

Incredibly, no mention of any of these individuals is made at all! And, although the Commonwealth did produce evidence that Angela B., Barbara L. and Kendra M. were on Defendants' property at the time Defendants arrived home, the preliminary hearing transcript is devoid of any evidence that these three individuals consumed alcohol at any time that day, let alone after Defendants arrived home. There is also no evidence that they were under the age of 21.

The same can be said about the six counts of corrupting the morals of a minor. Not one of the minors named in the complaint is even placed at the scene by the Commonwealth's evidence.

Defendants cannot be held for Court on such woefully insufficient - actually nonexistent - evidence.⁵

⁵The Court thus finds it unnecessary to address the question of whether the Commonwealth presented prima facie evidence that Defendants actually knew that alcohol was being consumed by

ORDER

AND NOW, this 9th day of February, 2001, for the foregoing reasons, Defendants' Petition for Writ of Habeas Corpus is hereby granted and the charges are hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Ron Travis, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson

minors on their property but allowed it to continue.